APPENDIX

DIGEST OF THE EVIDENCE

According to the record, plaintiff's evidence consists of the following:

(a) A list of teachers and information as to their training, years of service, salaries and ratings for the school years 1941-1942, 1942-1943, 1943-1944. While not required to do so, the defendants prepared and furnished this list to the plaintiff and it will be found in the record as Plaintiff's Exhibit 1.

(b) A photostatic copy of the petition of the Dade County Negro Teachers Association protesting the salaries paid to colored teachers.

(c) Depositions of James T. Wilson and Dan Conroy.

(d) A certified copy of the salary schedule adopted December 11, 1940.

(e) A report to the Board of Public Instruction by Superintendent Wilson concerning the proposed new schedule dated November 26, 1941.

(f) A certified copy of the salary schedule adopted by the Board on November 26, 1941.

(g) A certified copy of the schedule adopted by the Board on November 26, 1941, as amended April 29, 1942.

The record shows that the plaintiff did not produce a single witness at the trial of the case either to sustain his position or to rebut the evidence offered by the defendants.

The evidence produced by the defendants consisted of:

(1) Certified copies of excerpts of the minutes of the Board of Public Instruction and a certified copy of the salary schedule of November 26, 1941, as amended April 29, 1942 and July 21, 1943, and the forms and definitions used by the rating committee in rating each teacher and

(2) The testimony of the following witnesses:

R. P. Terry: Mr. Terry has been a member of the School Board since 1937, a former school teacher and principal and a former member of the State Board of Control, which latter Board has control of our state institutions of higher learning. He is a lawyer and had practiced in Dade County for the past twenty-one years. He had devoted a great deal of time to improving the salary schedules in use in the county and had for years felt that the 1940 schedule did not recognize sufficiently individual capabilities and had sought to have adopted and put in force a schedule that would measure individual teacher effectiveness and pay the teachers accordingly (R. 110).

James T. Wilson: Became County Superintendent of Dade County in 1937 and as County Superintendent he is the executive head of the school system of Dade County. He holds an A. B. and M. A. degree and has had wide experience as a teacher, principal and administrator and in evaluating the work and ability of teachers. He is an active member of the National Education Association and Florida Education Association and is past president of the Florida Education Association (R. 205-207).

I. T. Pearson: Holds degrees of A. B. and M. A., and for many years was a teacher and principal in Georgia, Louisiana

and Florida. From 1925 to 1938, he was Supervisor of Teachers, both white and negro, in Dade County and since 1938, he has been Director of Instruction of white and negro teachers in Dade County. For many years, he was a member of the State Grading Committee for grading teachers who sought to obtain teachers' certificates. He is an active member of the National Education Association and of the Florida Education Association. Since 1925 he has been actively interested in and a particular friend of the cause of negro education (R. 131-133).

Dan Conroy, Jr.: Is Supervisor of Negro Education in Dade County, which position he had held three years. Among his duties is that of the direct supervision of the Negro Instructional Personnel in the county. He spends much of his time with them in the classroom. He holds the degrees of A. B. and M. A.; has taught in junior and senior high schools; has had wide experience in statistics and in school transportation; was a member of and participated in the work of the Southern Works Conference at which was made a study of salary schedules designed to recognize the individual worth of teachers; is an active member of the National Education Association and the Florida Education Association and for many years has been actively interested in and is a warm friend of the cause of negro education (R. 274-276).

It clearly appears from the record that the action of the Board of Public Instruction in the adoption of the schedule of November 26, 1941, which was designed to measure the teacher worth of the individual teachers rather than to determine the worth of teachers as groups, was not occasioned by the action of the colored teachers in filing their protest with the Board on November 4, 1941. It is true that the protest was filed on November 4, 1941, and on the following day the Board adopted a resolution abolishing the schedule

of 1940 and it is further true that on November 26, 1941, the Board adopted the new schedule.

The evidence, however, clearly showed that the Board had been for many months working on the matter of adopting a schedule which would measure the worth of the individual teacher, as will appear from the following:

(1) In March, 1941, Mr. Terry, a member of the Board, made a trip to Tampa to attend a meeting of educators where the subject of Salary Schedules Measuring the Worth of the Individual Teachers was discussed. He returned and made a report of his findings to the Board and this information was used by the Board in its efforts to obtain such a schedule (R. 111-114). Mr. Terry testified that for a long time prior to the date upon which he made the trip to Tampa, he had felt that the 1940 schedule should be abolished because it did not recognize the worth of the individual teacher and that he had given a great deal of thought and effort to the matter of developing a schedule that would measure the worth of the individual teacher.

2. On May 14, 1941, an official resolution was passed by the Board requesting the Superintendent to secure and use the Morrison Rating Scale Profiles for Teachers and ascertain if that form of rating had any value.

3. On September 5, 1941, a resolution was adopted to the effect that it is determined advisable to revise the salary schedule as applied to teachers, with the thought that they should be paid in line with their teaching ability and instructing the Superintendent to take the necessary steps to give tests to all teachers, etc. (Defendant's Exhibit 2).

4. On November 5, 1941, a motion was unanimously adopted by the Board abolishing the then present (1940) salary schedule and that as promptly as possible a schedule be formulated on the basis of teaching ability (Defendant's Exhibit 3).

5. On November 26, 1941, the new schedule was adopted (Plaintiff's Exhibit 4).

6. Supt. Wilson's testimony that this schedule was the result of work he and his assistants had been engaged in for many years prior thereto was not challenged (R. 215). The detail of this work is fully disclosed in the record (pp. 213, 214).

7. At no time during the trial, or indeed to this point, has it been contended that the November, 1941 schedule was discriminatory or unfair on its face. We take the statement made in petitioner's brief (top p. 17) as a left-handed admission to like effect. At any rate, study thereof will convince the Court that the District Judge correctly found it fair on its face. Plaintiff's Exhibit 4. The schedule of November 1941 was amended April 29, 1942 and July 21, 1943. Plaintiff's Exhibit 5, Defendant's Exhibit 11.)

The schedule adopted November 26, 1941, required that all teachers be rated in one of three classifications: Good, Very Good and Excellent (Plaintiff's Exhibit 4, p. 10). These classifications were found inadequate and on April 29, 1942, the Board amended the salary schedule in several respects, including that of adding a fourth classification of "Fair". These four classifications remained the same at the time of the trial on December 6, 1943 (Defendant's Exhibit 11, p. 4).

The November, 1941 schedule provided that "The rating of teachers shall be a subjective and an objective rating by principals, supervisor of personnel, director of instruction, assistant director of instruction and the superintendent".

In the amendment to the schedule of April 29, 1942, this provision was changed by adding thereto Supervisors (Plaintiff's Exhibits 4 and 5, p. 10 and 10 respectively). On July 21, 1943, the sohedule was further amended and the wording of this provision was changed to make it conform to the practice that had been followed by the Board since the appointment of the rating Committee soon after the adoption of the schedule in November, 1941. This committee was composed of: James T. Wilson, Superintendent of Public Instruction (an elected official), I. T. Pearson, Director of Instruction, Miss Alice M. Kahl, Supervisor of Personnel, Miss Gertrude Shaffner, Assistant Director of Instruction, and Dan J. Conroy, Jr., Supervisor of Negro Education (Defendant's Exhibit 11 and 4, p. 4 and 2 respectively). The members of the committee served from November, 1941, to the time of the trial, December 6, 1943.

The plaintiff for the first time now objects to the personnel of the rating committee and says that it was unfair and discriminatory because a colored person did not serve thereon. Attention is directed to the following facts: (1) The objection comes too late — it should have been made before or at the trial; (2) there is no evidence that any colored teacher or principal was qualified to serve on the committee; (3) the committee is composed of supervisors and the evidence does not show that there is a negro supervisor in Dade County and (4) there is no evidence to show that the petitioner or those whom he represents suffered any injury by reason of the fact that no colored teacher or principal served on the committee.

It was found that teachers could not be adequately rated under the November, 1941 schedule because: (a) inadequate or no provision was made for rating (1) beginning teachers, (2) teachers with experience who had not taught in Dade County, (3) non-degree teachers and principals; (b) no provision was made for determining the salary of a teacher when she passed from a classification to a higher one, and (c) some teachers, white and colored could not be rated Good. The amendment of April 29, 1942, corrected these errors. There were some amendments adopted July 21, 1943, but they were primarily of a clarifying nature (Pl. Exh. 5, pages 10-13 and Def. Exh. 11, pages 3-6).

The rating committee proceeded with its labors as follows:

It soon discovered that it could not adequately rate the teachers under the November, 1941 schedule as above pointed out, but it did assign a rating to each teacher (R. 281-282). After the adoption by the Board of the amendments of April 29, 1942, and before the end of the school year, [1] the committee did rate each teacher (R. 284).

No salaries could be reduced by virtue of the ratings made during the school year 1941-42 because the Board adopted a policy forbidding such reduction. If the ratings had been completely applied during that time, some salaries would have been reduced.

In rating the teachers prior to the end of the 1941-42 school year, the committee did not use any forms prepared for this purpose, nor did it have before it any written definition of the items under the four factors upon which they rated the teachers.

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1. The school year is from July 1 to June 30.

The committee was not satisfied with its work so in the summer of 1942 it determined that it should adopt and use a rating form for each teacher and acordingly it adopted such forms (Defendant's Exhibits 5-9). These forms broke down the four factors upon which teachers were to be rated into several items. Written definitions of each item were also adopted (R. 149, 289).

In September and October, 1942, the rating committee re-rated each teacher. The committee held many meetings and had before it and used in its deliberation, the file of each teacher in the Superintendent's office, including the "Principal's Report of Teacher's Efficiency" card or success card, the rating forms and definitions and the information on each teacher possessed by the members of the committee. The committee members were, except the Superintendent, Supervisors and had long been in the system and some if not all, members knew each teacher and had observed her teaching. If adequate information was not available, then some member of the committee would discuss the teacher with her principal (R. 282, 287, 289). The rating of each teacher was then uniformly done without regard to race or color (R. 166, 167, 228, 287).

It thus appears that the first comprehensive rating was done in September and October, 1942, and the results first applied for the school year 1942-1943. The validity of the schedule, *designed to determine the teacher worth of the individual teachers* as distinguished from the teacher worth of any group, should logically be judged by the results of the rating. [1]

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1. The rating received by each teacher and the salary paid pursuant thereto appear in columns 9, 10, and 11, Plaintiff's Exhibit 1.

The rating process is a continuous one for when a teacher reaches the maximum salary in her classification, she must be re-rated.

The rating committee had nothing to do with fixing salaries, its duties being solely that of rating (R. 166).

The results of the several ratings are found on Plaintiffs' Exhibit 1.

There are some explanations attached to this exhibit but we add the following:

(1) The classifications and salaries in the schedule of November, 1941, and as amended are: (Plaintiffs' Exh. 4 and 5)

1941 Schedule

Classification	Minimum Salary	Maximum Salary
Good	720	1260
Very Good	1260	1800
Excellent	1800	2040

1941 Schedule as Amended April 29, 1942 and July 21, 1943

Classification	Minimum Salary	Maximum Salary
Fair	720	1080
Good	1080	1260
Very Good	1260	1800
Excellent	1800	2040

(2) When the salary schedule was placed in effect for the school year 1942-1943, all first year teachers of 1941-1942 were given the same placement test as the first year teachers of 1942-1943. All these teachers were rated and

placed on the salary schedule in accordance with its provisions except that all first year teachers of 1941-1942 were given the benefit of one year of service and received the $60 annual increase (R. 316 and all of Defendants' Exhibit 8 and column 10 of Defendants' Exhibit 1).

(3) Each teacher was entitled to an annual increase in salary of $60, until she reached the maximum salary in her classification. This annual increase was given to the teachers at the end of the school year until the school year 1943-1944 and up to that time was not a part of the contract salary, but since then it has been a part of the contract salary and this fact is reflected in the salaries shown on Plaintiffs' Exhibit 1.

(4) When a teacher reached the maximum salary of her classification, she was re-rated. The result of the re-rating placed her in a higher or lower classification or left her in her present classification and she was paid accordingly for the next school year.

We now examine the results in dollars and cents of the several ratings as shown by Plaintiffs' Exhibit 1.

The petitioner claims that the Board discriminated against the colored teachers, as a group, in the compensation paid them under the 1940 schedule and that this discrimination continued under the first rating made under the 1941 schedule and under the ratings which were made after the adoption of the April 29, 1942 amendment and during the school year 1941-1942 and at the time of the trial (R. 86-96). By inference the same claim is made as to the third ratings (summer and fall, 1942). Petitioner claims that under the 1940 schedule, and all subsequent schedules and amendments, the difference in salaries of white and colored teachers was maintained on the basis of a lower beginning salary for colored

teachers and that this difference continued from year to year with the addition of the annual automatic increase. Petitioner claims the salaries to be:

Years of Service	White Salaries	Colored Salaries
1	1020	720
2	1020	720
3	1080	780
4	1140	840
5	1200	900
6	1260	960
7	1320	1020
8	1380	1080
9	1440	1140
10	1500	1200 (R. 91)

Petitioner also claims that this condition continues with the years until the maximum was reached.

Let us examine the record under the *first rating* done under the *schedule as amended April 29, 1942*, and look at some examples where the salaries of white and colored teachers did not follow years of service (R. 314):

Years of Service	White Salary Paid	White Salaries Claimed by Petitioner	Colored Salary Paid	Colored Salaries Claimed by Petitioner
1	1080	1020		
10	1080	1500		
3		1080	1140	780
5		1200	1260	900
7		1320	1320	1020
8		1380	1380	1080
10	(1080 (1260	1500 (R. 292)		
15			1740	1400
16			1740	1560

Under the same ratings, we find 13 white teachers with 6 *years* of experience rated Good and 9 white teachers with

6 *years* of experience rated Very Good. The above group of teachers with the rating of Good actually received $1260 per year, that being the maximum payable under the rating of Good, and the above group of teachers with a rating of Very Good actually received $1800 per year, that being the maximum payable in their classification, but if appellants' contention be correct, then both groups necessarily would have received $1260 per year. Why? Because according to appellants, the classifications of Fair, Good, Very Good and Excellent in the schedules were merely subterfuges used for the purpose of paying white teachers higher salaries than negro teachers and they say that the salaries paid were the result of beginning all white teachers at $1020 per year and increasing each white teacher $60 per year thereafter (R. 85-94, 312).

We also cite the case of 12 first year white teachers known as cadets, whose salary was $730 per year and not $1020 as claimed by plaintiffs. There were also 18 first year permanent substitute teachers drawing $900 per year instead of $1020 as claimed by Plaintiffs (R. 333).

Next we take some examples of the results of the *second rating* under the November, 1941 schedule as amended April, 1942. These salaries were for the *school year 1942-1943*. The results appear in columns 9, 10 and 11 of Plaintiffs' Exhibit 1:

There are both white and colored teachers in the Good classification (salary $1080 to $1260) with experience from *1 to 15* or more years. There are two white teachers with 1 year of experience rated Good and 4 white teachers with 15 years of experience rated Good (R. 324). There are many colored teachers with from 3 to 14 years of experience rated Good (R. 326). To illustrate further that the salaries of

colored teachers do not follow the pattern as claimed by petitioner, i.e. years of service (R. 316-320):

Years of Service	Colored Salaries Actually Paid	Pattern which petitioner claims had been followed in payment of colored salaries
1	780 - 960	720
2	780 - 900	720
3	840 - 1140	780
4	1140 - 1260	840
6	960 - 1200	960
7	1260	1020
8	1260 - 1280	1080
9	1140 - 1440	1140
10	1320 - 1500	1200
11	1260 -	1260
12	1140 - 1620	1320
13	1680	1380
14	1320 - 1740	1440
15	1140	1500
16	1260 - 1800	1560

Further illustrative of variation of salaries from years of service, we quote from the testimony of Mr. Conroy (R. 292-295):

> "This tabulation indicates that more and more as you go into the application of this rating process the salaries paid and the number of years' experience of the teacher became more and more completely divorced. They have no apparent relationship in many, many, instances. * * It all depends entirely upon the rating classification that teacher fell into, that various teachers fell into. That is even more apparent for the school year 1942-1943. For example, an analysis of the salaries paid to white and colored teachers that received a rating of Good we find there were two white teachers with one year of experience who received a salary of $1080. There were no colored teachers in a similar classification.

"There were five white teachers that had two years of experience who received a salary of $1080. There were no colored teachers in that particular classification.

"We find thirty-six white teachers with three years of experience who received $1140.

"I could continue to state the whole thing year after year.

"We note that even many teachers with fifteen years or more of experience—we have white teachers receiving $1260, which was the maximum that they could be paid with a rating of Good. Those teachers had that rating.

"We had colored teachers also with a corresponding number of years of experience receiving the same salary of $1260.

"We find, taking another year for example, say the tenth year, we find white teachers with ten years of service with a rating of Very Good who are receiving $1500 a year.

"We find colored teachers with ten years of experience receiving a rating or a salary of $1500. Colored and white alike were rated and all Very Good with ten years of service or experience received the salary prescribed by the schedule.

"We find teachers with one year of experience, for example, in the Fair bracket rated only Fair, white teachers, receiving a salary which varied from $960 through to $1020 to $1080. They were teachers who had been given our examination for beginning teachers and who were rated and ranked accordingly and placed on the salary schedule according to their rank. We find colored teachers in exactly the same situation.

"To illustrate what was done with the beginning teachers, for example, it is very interesting to take the teach-

ers who were employed for the first time this year. They were given an examination and they were rated by the rating committee using the results of that examination.

"White and colored teachers were together given the same test under identically the same conditions. We had a broad beginning salary basis there. It began really anywhere from $720 to $1080.

"New teachers without experience can get anywhere between those two figures, depending on how the teacher is ranked in competition with all the other beginning teachers and it so happens that the figure from $720 to $1080 is readily broken down into eight steps of $60 each so that our teachers with the highest rank, the rank of one, we may pay a salary of $1080.

"Teachers with the rank of two received $1020, and so down to the rank of eight received $720.

"We find, this year, for example, beginning teachers receiving a salary all the way down $780 to $1080.

"None of the beginning teachers this year ranked low enough to receive the minimum salary of $720.

"The teachers who ranked highest were all white teachers. There were six of them out of eighteen white teachers and eleven colored teachers. Those of them who ranked one were given a rating by the committee of Good and the minimum salary of Good classification is $1080 a year.

"Now, the teachers who ranked second—there were seven white teachers and two colored teachers; those teachers were ranked Fair and they were given the maximum salary of the Fair classification, $1080. There were seven white and two colored.

"The teachers who ranked third—there were one white teacher and one colored teacher; those two were given

a rating of Fair for the third rank and were given identical salaries of $1020.

"Down in the fifth rank we find no white teachers from that point on down. Our white teachers did better on the examination as a group than the colored teachers, but, although there were individual negroes who did as well as many white teachers, we find eight colored teachers below that fifth rank.

"Taking this analysis as a whole we find that of the eighteen white teachers seventy-two per cent of them ranked in the upper quartile.

"Two of the eleven colored teachers or eighteen per cent ranked in the upper quartile.

"Twenty-eight per cent of the white teachers ranked in the second quartile with none falling any lower than that.

"One colored teacher or approximately nine per cent ranked in the second quartile, with six of the eleven teachers—colored—of fifty-five per cent, ranked in the middle half of this group—average beginning teachers, you might call them.

"None of the white teachers ranged in the lower quartile and twenty-seven per cent of the colored teachers fell in the lower quartile".

There were white and colored teachers with from 3 to 14 years of service rated Good.

There was a group of white and colored teachers that did not receive the $60.00 annual increase because they had reached the maximum of their respective classifications (R. 326-327).

Mr. Conroy gave the following examples (R. 326-327):

One white teacher 2 years rated Fair $1080.

One white teacher 6 years rated Good $1260.

One white teacher 13 years rated Good $1260.

One white teacher 10 years rated Good $1260.

One white teacher 15 years rated Good $1260.

One white teacher 25 years rated Fair $1080.

One colored teacher 8 years rated Good $1260.

One colored teacher 9 years rated Fair $1080.

One colored teacher 16 years rated Fair $1080.

One colored teacher 18 years rated Good $1360.

($100.00 additional salary above maximum of $1260 in Good classification, paid for Master's Degree).

These teachers cannot receive the $60.00 annual increase until they have improved in their teaching sufficiently to obtain a higher rating. When a teacher reaches the maximum in a classification, she is re-rated and if she has improved sufficiently, she is placed in a higher classification and if not, she remains in her present classification or is placed in a lower one. As long as she remains at the maximum of a classification she is re-rated each year (R. 328 and pages 10 and 11, Plaintiffs' Exhibit 5).

It will be noted that there appears on Plaintiffs' Exhibit 1, after the names of some teachers, the word "Resigned". Usually this indicates that the teacher resigned rather than

accept the reduction in salary or rather than take an examination (R. 331). As further evidence of the application of the schedule, we find:

Sixteen first year (had taught one year and would have been second year teachers if they had remained in system for 1942-1943) *white* teachers resigned when ratings placed them in a lower classification and would have reduced their salaries. There were *22* other (1st, 2nd, 3rd and 4th year) *white teachers* that refused to take the required examination for ratings because of the possibility of there being a reduction in salary. There were *12* other *white teachers* with longer years of service who resigned rather than accept a reduction in salary. They were rated Good or Very Good in the first rating under schedule as amended April 29, 1942, but their ratings were reduced to Good or Fair under the second ratings, which took place in the late summer and fall of 1942 for the school year 1942-1943 (R. 331-332).

Some white and colored second year teachers took the beginning teachers examination (Defendants' Exhibit 8) and were ranked and placed on the salary schedule accordingly. The salary received by these white teachers was $900 to $1020 and the salary received by the colored teachers was $780 to $960. The salary range on the schedule was $720 to $1080 (R. 335). The following are examples of variations in years of service and salaries of white and colored teachers showing ratings (R. 326-327):

White	Colored	Years of Service	Rating	Salary Paid
1		2	Fair	1080
1		6	Good	1260
1		10	Good	1260
1		13	Good	1260
1		15	Good	1260

White	Colored	Years of Service	Rating	Salary Paid
1		26	Fair	1080
	1	8	Good	1260
	1	9	Fair	1080
	1	16	Fair	1080
	1	18	Good	1360*

*Maximum salary under Good $1260. An additional $100 for Master's Degree.

We pass now to examples of the results of the application of the salary schedule of November 26, 1941, as amended April 29, 1942, and July 21, 1943, for the school year 1943-1944. The detail of the results appear in columns 12, 13 and 14 of Plaintiffs' Exhibit 1. By the beginning of the school year 1943-1944, the rating committee and the finance department had acquired sufficient experience with the application of the schedule to eliminate most of the errors and to actually make a complete application thereof, which was done. The fact that it took more than a year to accomplish this result is explained by the fact that rating was new and that there were approximately 1500 teachers and principals to rate and the finance department had to develop a technique for paying them under the ratings. So the ratings and salaries paid for the school year 1943-1944 actually reflect the first comprehensive picture of the application of the salary schedule of November, 1941 as amended.

Further demonstrating that the pattern, as contended for by the petitioner, was not followed, we find white and colored teachers with from one to fifteen years of experience rated Good and receiving the maximum salary of $1260. (R. 324)

Further illustrations that the salaries do not follow years of service (R. 320-323):

NEGRO TEACHERS

	Salary claimed by Petitioner to be paid
5 with 1 year experience salaries from $780 to $1080	$ 720
5 with 2 years experience salaries from $840 to $1020	720
5 with 3 years experience salaries from $840 to $1200	780
2 with 4 years experience salaries $1260	840
2 with 5 years experience salaries $1260	900
3 with 8 years experience salaries from $1140 to $1320	1080
2 with 9 years experience salaries from $1140 to $1560	1140
2 with 11 years experience salaries from $1260 to $1680	1260
3 with 13 years experience salaries from $1140 to $1800	1380

WHITE TEACHERS

	Salary claimed by Petitioner to be paid
1 with 2 years experience salaries $1080	1020 (R.326)
3 with 6 years experience salaries $1260	1260
4 with 7 yrs. exper. salaries from $1260 to $1320	1320
2 with 8 yrs. exper. salaries from $1260 to $1320	1380
2 with 11 yrs. exper. salaries from $1320 to $1680	1560

Some additional examples on this point are found in the cross-examination of Mr. Conroy (R. 324-346).

He was asked if he could "find a single white teacher in that tabulation (Plaintiffs' Exhibit 1) *who did not receive the grade of or rating of Good at three years of service"* and *the witness named nine such white teachers* (R. 343-344).

He was then asked:

"Now referring still to the same exhibit, *can you name me any colored teachers who received the classifications of*

Good before they were seven years in the service"? The question was later amended to include those in service for seven years or being in service eight years. *The witness gave the names of eleven such teachers that varied in length of service from two to seven years* (R. 344-346).

So it is apparent that the salaries paid under the schedule of November 26, 1941 as amended did not, as claimed by the petitioners, follow the years of service and that there are many variations from that pattern.

It is true that the result of the rating process is that a large part of the white teachers are rated Good or Very Good and a large part of the colored teachers are rated Fair or Good (some white being rated Fair and Very Good and some negroes being also rated Very Good). The only testimony as to why this result was obtained is to the effect that the rating process was fairly and uniformly applied to all teachers, without regard to race or color (R. 165-167, 228, 287).

There are other facts in the record that throw considerable light on why the white teachers *as a group* received higher rating than colored teachers *as a group*:

(1) The white teachers had for years been highly selected while this was not true of the colored teachers. There has been and is a great over-supply of well trained white teachers available in Miami and for this reason only the best white teachers have been retained in the system (R. 151, 208, 210 and 305).

(2) There has been and is a great shortage of well trained colored teachers. This condition is accounted for as follows: (a) The colleges do not train a sufficient number of colored teachers and (b) most colored teachers do not re-

ceive as good training in college as do the white teachers (R. 153, 209, 308, 309).

(3) The white principals demand a much higher standard of efficiency of their teachers than that demanded by the colored principals (R. 210).

(4) In actual teaching from day to day the record shows that white teachers:

(a) are more dependable than colored teachers

(b) accept responsibility more readily than colored teachers

(c) maintain better discipline, make better reports, give better protection to school property, make better use of related educational material and outside reading than colored teachers

(d) exhibit a greater interest and desire in becoming and being good teachers than colored teachers

(e) Have greater general knowledge and better organizing ability in class room than colored teachers (R. 168, 211, 308).

(5) In the fall of 1942, tests were given to beginning teachers, both white and colored. The teachers taking the tests were college graduates, held certificates from the State and the tests were given to both groups, under the same conditions. The test cited below was on "How I teach—an analysis of teaching processes and these are objective tests and they are graded in what we call a purely objective manner":

	Teachers taking the test and the results	
	White	Colored
In First Quartile	11	1
In Second Quartile	11	1
In Third Quartile	10	2
In Fourth Quartile	1	10
Total	33	14

In October, 1942, the same test was given to eleven white and three colored teachers with the result that the three lowest grades were made by the colored teachers. The white teachers graded 60 per cent and the colored teachers graded 41 per cent (R. 137-139). Dr. Pearson testified that from time to time he gave tests to colored teachers, at their request, and about the results of these tests he said: "* * invariably I find that the difference in scholarship is quite astounding between the white teachers and colored teachers".

The results of tests given the pupils of teachers may not of themselves be conclusive proof of the value of the teachers, yet they are indicative of the quality of the work of the teachers and when taken with other and stronger proof will certainly be worthy of consideration in determining the relative worth of the two groups of teachers. In April, 1942, Dr. Pearson gave College Placement test to all seniors in the high schools in Dade County. The test was prepared by the University of Florida at Gainesville for the purpose of checking on the ability of the seniors to do college work. He gave them to the colored seniors "in an effort to try to develop scholarship in that school as well as the white school". The giving of the test was supervised by the principals of the schools and then collected and delivered to Dr. Pearson who shipped them to the University of Florida and where they

were graded by a machine. The persons taking the tests were ranked from 100 down to one. The results of the test given in the following high schools of Dade County were:

"White high schools:

Andrew Jackson High	43
Homestead	30
Miami Beach High	66
Miami Edison High	43
Miami Senior High	55
Ponce de Leon High	55
Redland High	40

Colored high schools:

Booker T. Washington	14
Coconut Grove High	8
Dorsey High	8 (R. 141)"

Dr. Pearson, in commenting on the great difference between the white and colored seniors said:

> "I have given these college placement tests to the colored and white seniors consistently for the past three years and I find a very great discrepancy between the white seniors and colored seniors, so much so that it is rather astounding that there should be so much difference in high school graduates" (R. 140).

He also gave an English test to the high school seniors with similar results, to-wit:

White high schools:

Andrew Jackson High	46
Homestead High	34
Miami Beach High	56

White high schools:

Miami Edison High	56
Miami Senior High	50
Ponce de Leon High	58
Redland High	57

Colored high schools:

Booker T. Washington	19
Coconut Grove High	8
Dorsey High	7 (R. 142)

The same general results appeared from a test given these seniors in social science.

The results of the foregoing tests taken by both teachers and their pupils certainly sustain the result of the ratings and the uncontradicted testimony of the witnesses of the defendants that the white teachers *as a group* have greater teacher worth than colored teachers *as a group.*

The rating process was designed and intended to measure the teacher worth of the individual teacher. The undisputed evidence is that the salary schedule is a professionally sound and fair instrument for the accomplishment of this purpose and that the rating committee fairly and uniformly applied the rating process to all teachers and principals without regard to race and color. The rating committee *rated teachers* and not "white teachers" and "colored teachers" (R. 165-167, 228, 287). That the white and colored teachers may hold the same type of certificates issued by the State and that they have the same years of service does not mean that they have the same teacher worth (R. 154). Yet in effect the petitioner bases his entire claim of discrimination on the fact that white teachers *as a group* are paid higher salaries than colored teachers *as a group* when the personnel of both

groups have the same teacher certificates issued by the State and the same years of service. Petitioner would completely ignore the teacher worth of the individual teacher. In fact petitioner seeks equal pay for unequal service.

We submit that the petitioner has failed to show any unlawful discrimination against himself or against the group he represents. We conclude with the following quotation from the opinion of the Circuit Court of Appeal:

> "Where all rating is on an individual basis, it is impossible that there should be a class discrimination except against individuals of the class. No case of individual unfairness has been revealed by an appeal and no witness has testified to any, though unintended errors are admitted".

OCT 1 1945
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 296

HUBERT C. REYNOLDS, suing on behalf of of himself and others having common rights and interests,

Petitioner,

v.

BOARD OF PUBLIC INSTRUCTION FOR THE COUNTY OF DADE, STATE OF FLORIDA, and JAMES T. WILSON,

Respondents.

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

In petitioner's original brief in support of petition for certiorari we believe that the position of the petitioner, and those in behalf of whom he sues has been well stated, possibly necessitating no reply to the brief of the respondents. However, we feel that this particular case is the most important on the question of racial discrimination of any which has reached the Supreme Court of the United States in recent years and, because of that belief we would rather err on the side of excess zeal than on the side of lack of diligence.

There have been, in the lower courts, other cases of this type but which have not reached the Supreme Court after the cases have been completed by the taking of testimony. In no case involving racial discrimination would it be possible for the negro to show discrimination in any way other than by the works and

deeds of the School Board and its employees. We were convinced, that in this part of the country at least, the defendant School Boards would attempt to show lack of discrimination by generalities and asservations of complete sympathy for the negro and his problem and a total lack of intention to discriminate against him. We became convinced that the claims of the School Board would be, as it has been in other cases, that their Boards and employees were all highly educated, skillful and experienced educators; and that in the progress of each step of their work they were governed by the desire of and intention to rate, classify and pay whites and blacks according to their merits.

We knew, and still know, that in this part of the country at least that it would be impossible for the negro or his counsel to show either that the qualifications claimed were not possessed or the fact that an intention and desire to discriminate was present in the minds of the Board or its employees.

Obviously, it is impossible to show the presence of discrimination in the mind of a human. Actually, the petitioner would have no cause to complain if the mental and educational qualifications of the Board and its employees were below par. We have never claimed, and do not now claim that the Board and its employees were unfitted or unqualified for their positions and work because of lack of education, experience or the like. We have claimed, and do claim, that they were unqualified and unfitted for their position by reason of their expressed belief in the inferiority of the negro, as shown in the testimony of each of respondents' witnesses and, indeed, insisted upon by them.

The claim of petitioner, of course, is that the respondents violated the Constitution of the United States of America by adopting and pursuing the custom, policy and usage of paying the negroes less salaries than they pay the whites, solely because of the

color question. Obviously, in order to show "custom, policy and usage" it was necessary to show that over a given period of time—in this case from December 11, 1940 down to the schedule in operation at the time the case was tried—that the acts of the respondents were discriminatory and solely because of color. Therefore, the schedule of December 11, 1940 commonly referred to as the "color schedule" was introduced in evidence and the tabulation of compilation which is Petitioner's Exhibit of December 6, 1943, the official list, was introduced, for the purpose of showing that the discriminatory treatment complained of was in fact one of "custom, policy and usage."

We have said, and say again, that the importance of this case lies in the fact that it always will be impossible for the negro to show discrimination except by the works, actions and desires — and the result thereof—of respondents such as these. If by virtue of sheer numbers of witnesses and general assertions by them that they are qualified, that they did the work without discrimination and that the sole object was to bring about a fair result this type of case is to be decided then, indeed, as far as the negro is concerned the Fourteenth Amendment to the Constitution of the United States might just as well be non-existent.

At the risk of repetition, we say that it was impossible at the time of the trial and it is impossible now for the petitioner to challenge the qualifications and experience of respondent and respondent's witnesses—or to challenge what might have been in their minds other than by showing the symmetrically and monotonously similar results obtained by them under the unconstitutional color schedule and throughout all of their subsequent claimed efforts. The fact still remains that whenever and wherever it is possible to show that things were not as they were said by respondent to be—that whenever it is possible to prove or disprove, the accuracy of statements by them—the proof shows that they were either inaccurate or deceptive.

THE PROOF

Let us look at the proof:

On pages 21 and 22 of their brief, respondents say that Appendix II is of no value for the reason that it was impossible to place the schedule into effect as to white teachers during that school year in cases where it would result in reducing salaries. We have only to look at the official list itself to see that all white teachers were rated according to their years of service which did not call for any reduction of salaries. That is for 1941-1942 school year. If we turn to the column of salaries for the year 1942-1943 schedule we find that all the white teachers advanced automatically without reduction.

On page 22 of their brief respondents criticize Appendix III, stating that it does not give the correct amount of salary received by each teacher and that except as to a few teachers, no reference is made to the ratings. The fact of the matter is that the salaries given are base salaries as explained, without increments allowed for master degree or for special services which are not permanent. Any other system would make comparison impossible. All the white teachers in each year of service received the same salary as shown by Appendix III—we purposely omitted the classification because it meant nothing to the teacher.

On page 243 of the Record, Mr. Wilson, the Superintendent, testified:

"So we just took the two salary schedules and set them up."

The two salary schedules referred to were those of the unconstitional "color schedule" and the white schedule. Then (R. 244) the Superintendent said:

"We did not rate them on the salary schedule, whatever classification they fell into then."

To us, there is but one meaning to this statement and that is that the respondents did not intend to pay the colored teachers at any higher salaries than had been paid to them under the former unconstitutional "color schedule" where the minimum for blacks was $724.00 and for whites was $1,020.00, and which rate of pay all of the witnesses have insisted was fair pay.

Turning to Appendix II of our brief it will be seen that the colored teachers in 1942-1943-1944 were carried along on the same basis. Of course, there are a few exceptions where colored teachers received increases in some years of service while *every white teacher* in *any* year of service had the identical salary for that year as previously. The answer to this is given by the Superintendent himself (R. 253) under cross-examination:

Q. After the adoption of the April 29, 1942 schedule your committee rated all of the teachers, as I understand it, both white and colored?
A. That is right.

Q. And it was not found necessary, was it to change any of the ratings of the white teachers at that time?

A. I don't remember the exact ratings of individual teachers there. *I just recall we rated them as a group.* (Emphasis supplied.)

In his testimony (R. 312) Mr. Conroy, in order to prove that white teachers of the same year of service were rated differently, cited the 6-year white teachers of whom he said 13 were rated Good and 9 Very Good. This he claimed showed how teachers of the same number of pears of experience fell into two different classifications. In respondents' brief much is made of this, counsel for respondents (App. p. 12) saying,

> The above group of teachers with rating of Good actually receive $1,260.00 per year, that being the maximum payable under the rating